

5535. Misbranding of "Pulmonol." U. S. \* \* \* v. Pulmonol Chemical Co., a corporation. Tried to the court and a jury. Verdict of guilty. Fine, \$25. (F. & D. No. 7185. I. S. Nos. 1355-h, 7266-h.)

On July 17, 1916, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Pulmonol Chemical Co., a corporation, doing business at Brooklyn, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about October 4, 1913, and March 21, 1914, from the State of New York into the States of Massachusetts and Minnesota, respectively, of quantities of an article labeled in part, "Pulmonol," which was misbranded.

Analyses of samples of the article by the Bureau of Chemistry of this department showed that it was essentially a solution in glycerol and water of sodium benzoate, potassium, guaiacol sulphonate (thiocol), and a little strychnine, and colored with amaranth, a coal-tar dye.

It was alleged in substance in the information that the article in each shipment was misbranded for the reason that certain statements appearing on its label falsely and fraudulently represented it as a remedy for all pulmonary diseases and all forms of consumption, and as effective for improving nutrition and relieving night sweats, when, in truth and in fact, it was not. It was further alleged in substance that the article was misbranded for the reason that certain statements included in the circular accompanying the article falsely and fraudulently represented it as effective for preventing hemorrhages and breaking up all severe colds, as a cure for consumption and tuberculosis, and as a remedy for night sweats, when, in truth and in fact, it was not.

On February 8, 1917, the case came on for trial before the court and a jury, and after the submission of evidence and arguments by counsel the following charge was delivered to the jury on February 10, 1917, by the court (Chatfield, J.):

I think that the present case is in many ways one of the most serious and one of the most important matters which I have ever been called upon to submit to a jury. In the ordinary criminal case the question is whether one individual should be held to have been shown beyond a reasonable doubt to have violated something which Congress has said should constitute a crime, and the personal liberty or liability to a fine of that individual is the limit of risk in the particular case. In so far as the case may establish a doctrine, or in so far as the case may form an example, it may be used or not used—as the case may be disposed of if it is appealed or as Congress may legislate upon a matter of the same sort—when another case comes up. When a statute is passed it is made the law of the country, on which the act of one individual may be in a sense the test as to whether or not the opinion of a great many people or of a few people is correct, when the application of that test may mean the life or death, the health or sickness, of many people, and when you have the position of one man protesting for his ideas against the general opinion of those who are supposed to know about the subject. When a jury of 12 men are called upon to consider whether or not the ideas of the man as against everyone else, or nearly everyone else, are correct, or when the jury finds itself in a position of considering whether or not the opinion of the world up to the present time is correct, you have a very serious subject to consider, and the court has a very serious duty in deciding just how the matter shall be left to you and just what shall be left to you.

Now the Supreme Court of the United States, in the case from which the district attorney has just read to you, said, that it had been decided in other cases that Congress by this statute deliberately excluded the field where there are honest differences of opinion between schools and practitioners. It said that the statute did not intend to invade the domain of speculation. The Supreme Court has held in other cases that this statute, that the laws of the United States, do not attempt to decide whether or not a belief of one person or the belief of many persons is right, and that those laws do not bring up such a test in these criminal statutes. If I may use a plain illustration,